STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 30, 2022

IN THE MATTER OF:
Appeal Board No. 623144

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 623142, 623143, and 623144, the employer appeals from the decisions of the Administrative Law Judge, filed April 15, 2022, which granted the claimant's application to reopen the default decisions of the Administrative Law Judge filed January 18, 2022 and overruled the initial determinations disqualifying the claimant from receiving benefits, effective March 24, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of $3,718 in regular benefits recoverable pursuant to Labor Law § 597 (4);

charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of $21,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of $6,894 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of $1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by eight effective days, and charging a civil penalty of $4,737.30 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a homeless shelter from February 24, 2020 until March 23, 2020. His duties consisted of monitoring the clients residing in the shelter and cleaning the employer's premises. He was required to have face to face contact with clients and wore a mask at work.

During a meeting, the claimant's supervisor (PR) told him that he could no longer wear a mask at work, because it would be offensive to the clients. PR's superior (RA) also told him that he could no longer wear a mask at work. The claimant told them that he needed to wear a mask, because his grandfather became very ill due to contracting COVID-19 and he did not want to risk exposure to COVID-19. PR told him if he did not comply with their directive, he would be let go. The claimant stopped reporting to work because he feared for his safety. On April 6, 2020, the employer sent the claimant a termination letter for job abandonment after he had absent for three consecutive days.

When the claimant filed a claim for benefits, he stated that his employment ended due to being discharged. He received $3,718 regular benefits, and $21,000 in FPUC, $6,894 in PEUC, and $1,800 in LWA benefits.

The claimant did not proceed at the January 18, 2022 hearing because he wanted representation.

OPINION: The credible evidence establishes that the claimant did not proceed at the prior hearing because he wanted representation. Accordingly, we conclude that the claimant has demonstrated good cause for failing to appear at the January 18, 2022 hearing and that the application to reopen should be granted.

The credible evidence further establishes that the claimant voluntarily left his job because the employer prohibited him from wearing a mask at work and the claimant feared for his safety. We note that the employer's witness, the program director, had no firsthand knowledge of the conversations between the claimant and PR and RA. However, the claimant's testimony was corroborated by another witness. As the claimant had a reasonable fear for his safety, we further conclude that the claimant had good cause to leave his employment (See Appeal Board No. 618109). As the claimant's employment ended under non-disqualifying circumstances, we further conclude that he was not overpaid any benefits.

The credible evidence further establishes that the claimant stated that his employment ended due to discharge. As he was told that he would be fired if he continued to wear the mask, and as he had received a termination letter, it was not unreasonable for the claimant to select discharge as the reason for separation. Accordingly, we further conclude that the claimant did not make a willful misrepresentation to obtain benefits.

DECISION: The decisions of the Administrative Law Judge are affirmed.

The claimant's application to reopen the default decisions of the Administrative Law Judge filed January 18, 2022 is granted.

In Appeal Board Nos. 623142, 623143, and 623144, the initial determinations disqualifying the claimant from receiving benefits, effective March 24, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of $3,718 in regular benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant

with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of $21,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of $6,894 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of $1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by eight effective days, and charging a civil penalty of $4,737.30 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER